

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHARLES DEAN CLARK,)	No. C 06-2522 MMC (PR)
Petitioner,)	ORDER GRANTING REQUEST FOR
v.)	STAY; DIRECTIONS TO CLERK
KEN CLARK,)	(Docket No. 9)
Respondent.)	

On April 11, 2006, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On November 17, 2006, pursuant to respondent's motion to dismiss the petition as unexhausted, the Court found petitioner had exhausted his third claim, but not his first two claims. Consequently, the Court allowed petitioner to either file an amended petition with only his exhausted third claim, or request a stay while he exhausts his two unexhausted claims. See Rhines v. Webber, 544 U.S. 269, 277 (2005) (finding district courts have authority to stay federal habeas petition, and AEDPA does not deprive them of that authority); see also Pace v. DiGuglielmo, 544 U.S. 408, 416 (2005) (noting prisoners may file "protective" petition in federal court and ask federal court to stay federal habeas proceedings until state remedies exhausted). Petitioner chose the latter course, having filed a request for a stay.

Accordingly, the motion for a stay is GRANTED, and the above-titled action is hereby STAYED until petitioner files a motion to reopen as described below.

Petitioner is cautioned that if he wishes to have this Court consider his claims, he must properly present the unexhausted claims he wishes to raise herein to the California Supreme

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1 Court within thirty days of the date this order is filed; thereafter, within thirty days of the
2 California Supreme Court's decision, he must file a motion to reopen this action. Further, if
3 petitioner wishes to have this Court consider his claims, he must file an AMENDED
4 PETITION at the same time as the above-described motion to reopen this action. The
5 amended petition must include the caption and civil case number used in this order,
6 No. C 06-2522 MMC (PR), and must include the words AMENDED PETITION on the first
7 page.

8 In the amended petition, petitioner must include all the claims he wishes to present,
9 including both the newly exhausted claims and the cognizable third claim from the present
10 petition. If petitioner simply files a motion to reopen this action, but does not concurrently
11 file an amended petition in compliance with the instructions set forth herein, this action will
12 proceed only on the basis of the third claim in the petition.

13 The Clerk shall ADMINISTRATIVELY CLOSE the file pending the stay of this
14 action.

15 This order terminates Docket No. 9.

16 IT IS SO ORDERED.

17 DATED: December 21, 2006


MAXINE M. CHESNEY
United States District Judge

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